

CHRISTIE HOBBS
PARTNER

DIRECT 682.422.0021
CHRISTIE@LEASORCRASS.COM



LEASOR CRASS, P.C.

302 W. BROAD STREET
MANSFIELD, TEXAS 76063
682.422.0009
FAX 682.422.0008
WWW.LEASORCRASS.COM

March 11, 2016

Via Electronic Filing System and Certified Mail, RRR

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Reconsideration, CC Docket No. 02-6 (July 30, 2015)
Mansfield Independent School District

Dear Ms. Dortch:

On July 30, 2015, Mansfield Independent School District (“Mansfield”) filed a Petition for Reconsideration in the above-referenced docket (“Petition”).¹ In the Petition, Mansfield seeks reconsideration of a decision of the Wireline Competition Bureau (“WCB”). In that decision, issued June 30, 2015, WCB denied Mansfield’s request for relief of a decision made by the Universal Service Administrative Company (“USAC”).²

On December 3, 2015, Mansfield representatives, including the undersigned, met with WCB attorney-advisors to discuss the Petition.³ In that meeting, we provided additional information to WCB. By this letter, we respectfully request that the Commission allow Mansfield to supplement the record for its Petition with the facts and arguments discussed in that meeting.⁴

¹ Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Numbers 788976, 794118, 815691, 845493, 871961, 902395, 906722 (filed July 30, 2015).

² See Public Notice, Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket Nos. 02-6, 96-45, DA 15-773, at 5 (June 30, 2015) (June 2015 PN).

³ Attending the meeting were Aaron Garza, deputy division chief, TAPD; James Bachtell, attorney-advisor, TAPD; Sibio McNally, attorney-advisor, TAPD; Elizabeth Drogula, attorney-advisor, TAPD; Jeff Brogden, Associate Superintendent, Facilities and Bonds Program, Mansfield Independent School District; Sean Scott, Assistant Superintendent of Technology and Information Systems, Mansfield Independent School District; Jane Kellogg, Kellogg and Sovereign; Christie Hobbs, Leasor Crass, P.C.; and Gina Spade, Broadband Legal Strategies.

⁴ 47 C.F.R. § 1.106(f); see also 1.106(b)(3), (c)(2). Consideration of the information provided herein is in the public interest. Without the information herein, WCB would not have all of the facts necessary to grant the waiver request, if that is what WCB determines is the correct resolution. Mansfield believes it met Commission requirements, but, in the alternative, it has requested a waiver of the rules. Petition at 22, 25.

USAC alleges that Mansfield did not provide enough specificity on its FCC Forms 470 when it bid for telecommunications and Internet access services.⁵ Because Mansfield used that same format on its Forms 470 for FYs 2011, 2012 and 2013, Mansfield's funding requests for all three years have been rejected. USAC rescinded its approvals for Mansfield's funding for 2011 and 2012 on May 29, 2014.⁶ Funding for 2013 was denied on May 22, 2014. Prior to those denials, Mansfield was unaware that it had been submitted FCC Forms 470 that were insufficient in USAC's view.

Contrary to the prior decisions to the contrary, Mansfield's FCC Forms 470 for FYs 2011, 2012 and 2013 represented a *bona fide* request for Priority One ("P1") services.⁷ The Commission's rules state that the "FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested: (i) a list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and (ii) sufficient information to enable bidders to reasonably determine the needs of the applicant."⁸ An RFP was not required for these funding years.⁹

As stated in the Petition, Mansfield's Forms 470 were not overbroad.¹⁰ Mansfield properly included a list of all of the P1 services for which Mansfield was seeking bids. The services Mansfield sought were listed in its technology plan.¹¹ Mansfield therefore provided a list of specified services for which it was likely to seek discounts.

Mansfield also provided sufficient information for a bidder to reasonably determine its needs. While USAC commented that Mansfield violated the Commission's rule requiring a *bona fide* request, it was not clear exactly what USAC found deficient. Based on questions Mansfield received in the

⁵ Petition at 2.

⁶ *Id.* USAC denied the appeals of these decisions on September 5, 2014.

⁷ 47 U.S.C. § 254(h)(1)(B). Mansfield also sought bids for Priority Two ("P2") services but then subsequently determined it did not have the resources to support P2 services. As such, Mansfield did not apply for P2 services. Mansfield includes a discussion of its P2 Form 470 issues in its appeal and Petition because USAC's reviewers had asked numerous questions about P2 services, even though Mansfield never filed an application for P2 services to be reviewed by USAC.

⁸ 47 C.F.R. § 54.503(c) (2011).

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, at 9077-80, ¶¶ 572-579 (1997); *see also Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, DA 13-1946, ¶ 2 (Wireline Comp. Bur. 2013) ("The applicant may describe the services it is seeking on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services.").

¹⁰ Petition at 6.

¹¹ Petition at 7 (listing the services requested and the corresponding reference in Mansfield's technology plan.).

application review process, it seems that USAC – and possibly the Commission¹² – took issue with Mansfield’s use of the term “district-wide.”¹³ By stating it wanted services district-wide, Mansfield provided enough information for a bidder to determine Mansfield’s Priority One needs. If a service provider wanted to bid and was confused by the use of “district-wide” as a term, however, it could have asked Mansfield for clarification or more information, or simply looked up the locations of the district’s buildings on its website. As the Forms 470 must be filed with USAC and then posted on USAC’s website, if USAC had an issue with the sufficiency of the information included, USAC should have identified the issue to Mansfield prior to denying three funding years – three years after Mansfield filed its FCC Forms 470 for funding year 2011. As the Commission had not provided guidance beyond that cited above, there was no way for Mansfield to know that its use of the term “district-wide” was inappropriate.

Further, WCB has found that the exact same language on an FCC Form 470 did not violate Commission rules. In *Ramirez*, the applicant failed to indicate that it intended to issue an RFP.¹⁴ WCB found that the 470 “contained enough detail for the services providers to identify the desired services and to formulate bids” such that all bidders were on a level playing field.¹⁵ This case is more on point than the cases cited by WCB in the appeal denial public notice. In *Chicago*, the Chicago Public Schools did not seek bids for internal connections at all; that is, internal connections services were completely omitted from its 470.¹⁶ Mansfield, in contrast, requested bids for all the services for

¹² It is difficult to determine exactly on what facts WCB based its denial of Mansfield’s appeal. The Public Notice denied the appeal and cited to the *Ysleta* order and a 2013 WCB Order for support in a footnote: “*See, e.g., Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26406, 26410, para. ¶ 7 (2003) (clarifying that the requirement for a bona fide request for services means that “applicants must submit a list of specified services for which they anticipate they are likely to seek discounts consistent with their technology plans, in order to provide potential bidders with sufficient information on the FCC Form 470, or on an RFP cited in the FCC Form 470, to enable bidders to reasonably determine the needs of the applicant”); *Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, paras. 3-5 (Wireline Comp. Bur. 2013) (finding that the applicant violated the Commission’s competitive bidding requirements by failing to include sufficient information on its FCC Form 470 to enable prospective service providers to identify and formulate bids).” Presumably, Mansfield’s FCC Forms 470s were not adequately sufficient, but the public notice does not explain why Mansfield fails to meet that standard. *See* June 2015 PN.

¹³ Petition at 2-3.

¹⁴ *See Request for Review of a Decision of the Universal Service Administrator by Ramirez Common School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 11-1039 (Wireline Comp. Bur. 2011).

¹⁵ *Id.* at ¶ 7.

¹⁶ *See also Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 29 FCC Rcd 9289, 9291-92, ¶¶ 7-8 DA 14-1084 (Wireline Comp. Bur. 2014).

which it sought E-rate funding. In *Washington USD*, another WCB order cited in the appeal public notice, the school district issued an RFP with much greater detail than its 470, failed to note that it would have an RFP on its 470, and did not provide the RFP to all of the bidders.¹⁷ Mansfield did not issue an RFP and therefore no potential bidder was disadvantaged for not having an RFP, as was the case in *Washington USD*. Finally, while the *Ysleta* order adopted by the FCC in 2003, established the requirement of “sufficient” information for FCC Forms 470 that was later codified in the Commission’s rules, the facts in *Ysleta* are not applicable here.¹⁸ In *Ysleta*, the Commission found that the school district sought bids for a “systems integrator,” which were not E-rate eligible services. Here, there is no dispute that Mansfield sought bids for E-rate eligible services.

For these reasons, Mansfield’s FCC Forms 470 for funding years 2011, 2012 and 2013 did not violate Commission rules. Even if WCB believes that Mansfield did not submit a *bona fide* request for services, however, a waiver of the Commission’s rules would serve the public interest in this instance. In determining whether a waiver should be granted, prior WCB orders establish an analysis of whether the outcome of the competitive bidding process was consistent with the policy goals underlying the rules.¹⁹ In *Approach Learning*, for example, applicants had failed to indicate they planned to issue an RFP. WCB granted a waiver because (1) all bidders were on a “level playing field” and (2) there was no actual harm to the competitive bidding process.²⁰

Mansfield did not receive any bids for its services. Because no bids were received, Mansfield selected the best service from the state-negotiated contract. The contract Mansfield selected was procured by the State of Texas Department of Information Resources (“DIR”), using the Form 470 process. The DIR competitively bid to get the best rate and made it available to all public school districts in the state through an interlocal cooperative.²¹ No provider was disadvantaged; no service provider had any information that another provider did not have. As such, even if Mansfield had written its FCC Form 470 in greater detail, it is likely that no bidders would have bid to provide the requested services and the outcome of the competitive bidding process would have been the same.

¹⁷ See *Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, DA 13-1946, ¶¶ 3-5 (Wireline Comp. Bur. 2013).

¹⁸ See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, FCC 03-313, 18 FCC Rcd 26406, 26410, ¶¶ 22-30 (2003).

¹⁹ See *Request for Review of the Decision of the Universal Service Administrator by Euclid City School District; Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 12-1843 (Wireline Comp. Bur. 2012), ¶ 2 (“Given that Euclid and Shannon ultimately selected the least expensive responsive service offerings, despite failing to assign the highest weight to price in their vendor evaluation processes, we find that the outcomes of their vendor selection processes were consistent with the policy goals underlying the Commissions’ competitive bidding rules”).

²⁰ See *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Centers; Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket 02-6, DA 08-2380, at ¶ 8 (Wireline Comp. Bur. 2008).

²¹ Petition at 11-13.

Therefore, there was no harm to the competitive bidding process or the Universal Service Fund (“USF”).

While there was no harm to the USF caused by any inadvertent error on Mansfield’s part, the harm to Mansfield if WCB denies Mansfield’s Petition would be substantial. The \$1.8 million for telecommunications and Internet access, which Mansfield would have to bear without USF help, equal the annual salaries of 58 teachers. USAC’s delay in identifying the issue increased the harm to Mansfield. USAC did not tell Mansfield it objected to Mansfield’s 2011 Form 470 until more than three years after it was filed. Had USAC acted more quickly, Mansfield could have revised at least two years’ worth of forms.

As noted in the Petition, numerous applicants have used and continue to use this level of specificity in their bidding, specifically using the term “district-wide” without issuing an RFP.²² If the Commission denies only Mansfield’s applications, then it appears to be applying the rule arbitrarily. If, on the other hand, the Commission denies funding for all of the school districts, then many other schools would suffer the same harm as Mansfield, without any benefit to the program. WCB’s decision would not deter other schools from making the same mistakes in the future, as the Commission has, for the most part, remedied this issue with its adoption of the new FCC Form 470. Additionally, the Commission could emphasize the correct amount of information that should be included in a FCC Form 470 or an RFP via additional training or by providing an example of a sufficient RFP instead of singling Mansfield out with a strict interpretation of the rule.

We sincerely appreciate the time of the WCB attorneys and managers who met us with in December. We hope this additional information on the record is helpful as the Bureau considers Mansfield’s petition. Thank you for your attention to this matter. If you have any additional questions, please contact us.

Sincerely,



Christie Hobbs

- c. Dr. Jim Vaszauskas
- Mr. Jeff Brogden
- Dr. Sean Scott
- Ms. Jane Kellogg
- Ms. Gina Spade

²² Petition at 13-19.